

AMENDED IN ASSEMBLY JANUARY 29, 2002

AMENDED IN ASSEMBLY JANUARY 7, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

## ASSEMBLY BILL

**No. 890**

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**Introduced by Assembly Member Cedillo**

February 22, 2001

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An act to amend Sections 5914, 5917, 5919, 5920, 5921, 5923, and 5924 of the Corporations Code, relating to health facilities.

### LEGISLATIVE COUNSEL'S DIGEST

AB 890, as amended, Cedillo. Health facilities: sale of assets.

Existing law requires any nonprofit corporation that is subject to the Nonprofit Public Benefit Corporation Law and that operates or controls a health facility or operates or controls a health facility that provides similar health care, to provide written notice to, and obtain the written consent of, the Attorney General prior to selling or otherwise disposing of a material amount of its assets to a for-profit corporation or entity or to a mutual benefit corporation or entity.

This bill would instead make these requirements applicable to any nonprofit corporation that operates or controls a health facility or operates or controls a facility that provides similar health care. The bill would also authorize the Attorney General to consider, before consenting to an agreement to sell or dispose of assets to a for-profit corporation, whether the *terms and conditions of the agreement or transaction are fair and reasonable to the nonprofit corporation, and whether* agreement or transaction is at fair market value, as specified.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 5914 of the Corporations Code is  
2 amended to read:

3 5914. (a) (1) Any nonprofit corporation that is defined in  
4 Section 5046 and operates or controls a health facility, as defined  
5 in Section 1250 of the Health and Safety Code, or operates or  
6 controls a facility that provides similar health care, shall be  
7 required to provide written notice to, and to obtain the written  
8 consent of, the Attorney General prior to entering into any  
9 agreement or transaction to do either of the following:

10 (A) Sell, transfer, lease, exchange, option, convey, or otherwise  
11 dispose of, its assets to a for-profit corporation or entity or to a  
12 mutual benefit corporation or entity when a material amount of the  
13 assets of the nonprofit corporation are involved in the agreement  
14 or transaction.

15 (B) Transfer control, responsibility, or governance of a  
16 material amount of the assets or operations of the nonprofit  
17 corporation to any for-profit corporation or entity or to any mutual  
18 benefit corporation or entity.

19 (2) The substitution of a new corporate member or members  
20 that transfers the control of, responsibility for, or governance of the  
21 nonprofit corporation shall be deemed a transfer for purposes of  
22 this article. The substitution of one or more members of the  
23 governing body, or any arrangement, written or oral, that would  
24 transfer voting control of the members of the governing body, shall  
25 also be deemed a transfer for purposes of this article.

26 (b) The notice to the Attorney General provided for in this  
27 section shall include and contain the information the Attorney  
28 General determines is required. The notice, including any other  
29 information provided to the Attorney General under this article,  
30 and that is in the public file, shall be made available by the  
31 Attorney General to the public in written form, as soon as is  
32 practicable after it is received by the Attorney General.

33 (c) This section shall not apply to a nonprofit corporation if the  
34 agreement or transaction is in the usual and regular course of its  
35 activities or if the Attorney General has given the corporation a



1 written waiver of this section as to the proposed agreement or  
2 transaction.

3 (d) This section shall apply to any foreign nonprofit  
4 corporation that operates or controls a health facility, as defined in  
5 Section 1250 of the Health and Safety Code, or a facility that  
6 provides similar health care.

7 SEC. 2. Section 5917 of the Corporations Code is amended to  
8 read:

9 5917. The Attorney General shall have discretion to consent  
10 to, give conditional consent to, or not consent to any ~~such~~  
11 agreement or transaction described in subdivision (a) of Section  
12 5914. In making the determination, the Attorney General shall  
13 consider any factors that the Attorney General deems relevant,  
14 including, but not limited to, whether any of the following apply:

15 (a) The terms and conditions of the agreement or transaction  
16 are fair and reasonable to the nonprofit corporation.

17 (b) The agreement or transaction will result in inurement to any  
18 private person or entity.

19 (c) Any agreement or transaction that is subject to this article  
20 is at fair market value. In this regard, “fair market value” means  
21 the most likely price that the assets being sold would bring in a  
22 competitive and open market under all conditions requisite to a fair  
23 sale, the buyer and seller, each acting prudently, knowledgeably  
24 and in their own best interest, and a reasonable time being allowed  
25 for exposure in the open market.

26 (d) The market value has been manipulated by the actions of the  
27 parties in a manner that causes the value of the assets to decrease.

28 (e) The proposed use of the proceeds from the agreement or  
29 transaction is consistent with the charitable trust on which the  
30 assets are held by the health facility or by the affiliated nonprofit  
31 health system.

32 (f) The agreement or transaction involves or constitutes any  
33 breach of trust.

34 (g) The Attorney General has been provided, pursuant to  
35 Section 5250, with sufficient information and data by the  
36 nonprofit corporation to evaluate adequately the agreement or  
37 transaction or the effects thereof on the public.

38 (h) The agreement or transaction may create a significant effect  
39 on the availability or accessibility of health care services to the  
40 affected community.

1 (i) The proposed agreement or transaction is in the public  
2 interest.

3 SEC. 3. Section 5919 of the Corporations Code is amended to  
4 read:

5 5919. (a) Within the time periods designated in Section 5915  
6 and relating to those factors specified in Section 5917, the  
7 Attorney General may do the following:

8 (1) Contract with, consult, and receive advice from any state  
9 agency on those terms and conditions that the Attorney General  
10 deems appropriate.

11 (2) In his or her sole discretion, contract with experts or  
12 consultants to assist in reviewing the proposed agreement or  
13 transaction.

14 (b) Contract costs shall not exceed an amount that is reasonable  
15 and necessary to conduct the review and evaluation. Any contract  
16 entered into under this section shall be on a noncompetitive bid  
17 basis and shall be exempt from Chapter 2 (commencing with  
18 Section 10290) of Part 2 of Division 2 of the Public Contract Code.  
19 The nonprofit corporation, upon request, shall pay the Attorney  
20 General promptly for all contract costs.

21 (c) The Attorney General shall be entitled to reimbursement  
22 from the nonprofit corporation for all actual, reasonable, direct  
23 costs incurred in reviewing, evaluating, and making the  
24 determination referred to in this article, including administrative  
25 costs. The nonprofit corporation shall promptly pay the Attorney  
26 General, upon request, for all of those costs.

27 (d) (1) In order to monitor effectively ongoing compliance  
28 with the terms and conditions of any sale or transfer of assets  
29 subject to Section 5914, including, but not limited to, the ongoing  
30 use of the charitable assets in a manner consistent with the trust  
31 pursuant to which they are held, the Attorney General may, in his  
32 or her sole discretion, contract with experts and consultants to  
33 assist in this regard.

34 (2) Contract costs shall not exceed an amount that is reasonable  
35 and necessary to conduct the review and evaluation. Any contract  
36 entered into under this section shall be on a noncompetitive bid  
37 basis and shall be exempt from Chapter 2 (commencing with  
38 Section 10290) of Part 2 of Division 2 of the Public Contract Code.  
39 The nonprofit corporation shall pay the Attorney General  
40 promptly for all contract costs.



(3) The Attorney General shall be entitled to reimbursement from the nonprofit corporation for all actual, reasonable, and direct costs incurred in monitoring ongoing compliance with the terms and conditions of the sale or transfer of assets, including administrative costs. The nonprofit corporation shall promptly pay the Attorney General upon request for all of those costs.

SEC. 4. Section 5920 of the Corporations Code is amended to read:

5920. (a) (1) Any nonprofit corporation that is defined in Section 5046 and operates or controls a health care facility, as defined in Section 1250 of the Health and Safety Code, or operates or controls a facility that provides similar health care, shall be required to provide written notice to, and to obtain the written consent of, the Attorney General prior to entering into any agreement or transaction to do either of the following:

(A) Sell, transfer, lease, exchange, option, convey, or otherwise dispose of, its assets to another nonprofit corporation or entity when a material amount of the assets of the nonprofit corporation are involved in the agreement or transaction.

(B) Transfer control, responsibility, or governance of a material amount of the assets or operations of the nonprofit corporation to another nonprofit corporation or entity.

(2) The substitution of a new corporate member or members that transfers the control of, responsibility for, or governance of the nonprofit corporation, the substitution of one or more members of the governing body that would transfer voting control of the members of the governing body, or any arrangement, written or oral, that would transfer voting control of the entity shall be deemed a transfer for purposes of this article.

(b) The notice to the Attorney General provided for in this section shall contain the information the Attorney General determines is required. The notice, including any other information provided to the Attorney General under this article, and that is the public file, shall be made available by the Attorney General to the public in written form, as soon as is practicable after it is received by the Attorney General.

(c) This section shall not apply to a nonprofit corporation if the agreement or transaction is in the usual and regular course of its activities or if the Attorney General has given the corporation a

1 written waiver of this section as to the proposed agreement or  
2 transaction.

3 (d) This section shall apply to any foreign nonprofit  
4 corporation that operates or controls a health facility, as defined in  
5 Section 1250 of the Health and Safety Code, or a facility that  
6 provides similar health care.

7 (e) This section shall not apply to an agreement or transaction  
8 if the other party to the agreement or transaction is an affiliate, as  
9 defined in Section 5031, of the transferring nonprofit public  
10 benefit corporation or entity, and the corporation or entity has  
11 given the Attorney General 20 days advance notice of the  
12 agreement or transaction.

13 SEC. 5. Section 5921 of the Corporations Code is amended to  
14 read:

15 5921. Within 60 days of the receipt of the written notice  
16 required by Section 5920, the Attorney General shall notify the  
17 nonprofit corporation in writing of the decision to consent to, give  
18 conditional consent to, or not consent to the agreement or  
19 transaction. The Attorney General may extend this period for one  
20 additional 45-day period if any of the following conditions are  
21 satisfied:

22 (a) The extension is necessary to obtain relevant information  
23 from any state agency, experts, or consultants.

24 (b) The proposed agreement or transaction is substantially  
25 modified after the first public meeting conducted by the Attorney  
26 General in accordance with Section 5922.

27 (c) The proposed agreement or transaction involves a  
28 multifacility health system serving multiple communities, rather  
29 than a single facility.

30 SEC. 6. Section 5923 of the Corporations Code is amended to  
31 read:

32 5923. The Attorney General shall have discretion to consent  
33 to, give conditional consent to, or not consent to any agreement or  
34 transaction described in subdivision (a) of Section 5920. In  
35 making the determination, the Attorney General shall consider any  
36 factors that the Attorney General deems relevant, including, but  
37 not limited to, whether any of the following apply:

38 (a) *The terms and conditions of the agreement or transaction*  
39 *are fair and reasonable to the nonprofit corporation.*



1 (b) The agreement or transaction will result in inurement to any  
2 private person or entity.

3 ~~(b) The proposed use of the proceeds from the agreement or~~  
4 ~~transaction is consistent with the charitable trust on which the~~  
5 ~~assets are held by the health facility or by the affiliated nonprofit~~  
6 ~~health system.~~

7 (c) Any agreement or transaction that is subject to this article  
8 is at fair market value. “Fair market value” means the most likely  
9 price that the assets being sold would bring in a competitive and  
10 open market under all conditions requisite to a fair sale, the buyer  
11 and seller, each acting prudently, knowledgeably, and in their own  
12 best interest, and a reasonable time being allowed for exposure in  
13 the open market.

14 (d) The market value has been manipulated by the actions of the  
15 parties in a manner that causes the value of the assets to decrease.

16 (e) The proposed use of the proceeds from the agreement or  
17 transaction is consistent with the charitable trust on which the  
18 assets are held by the health facility or by the affiliated nonprofit  
19 health system.

20 (f) The agreement or transaction involves or constitutes any  
21 breach of trust.

22 (g) The Attorney General has been provided, pursuant to  
23 Section 5250, with sufficient information and data by the  
24 nonprofit public benefit corporation to evaluate adequately the  
25 agreement or transaction or the effects thereof on the public.

26 (h) The agreement or transaction may create a significant effect  
27 on the availability or accessibility of health care services to the  
28 affected community.

29 (i) The proposed agreement or transaction is in the public  
30 interest.

31 SEC. 7. Section 5924 of the Corporations Code is amended to  
32 read:

33 5924. (a) Within the time periods designated in Section 5921  
34 and relating to those factors specified in Section 5923, the  
35 Attorney General may do the following:

36 (1) Contract with, consult, and receive advice from any state  
37 agency on those terms and conditions that the Attorney General  
38 deems appropriate.



1 (2) In his or her sole discretion, contract with experts or  
2 consultants to assist in reviewing the proposed agreement or  
3 transaction.

4 (b) Contract costs shall not exceed an amount that is reasonable  
5 and necessary to conduct the review and evaluation. Any contract  
6 entered into under this section shall be on a noncompetitive bid  
7 basis and shall be exempt from Chapter 2 (commencing with  
8 Section 10290) of Part 2 of Division 2 of the Public Contract Code.  
9 The selling nonprofit corporation, upon request, shall pay the  
10 Attorney General promptly for all contract costs.

11 (c) The Attorney General shall be entitled to reimbursement  
12 from the selling nonprofit corporation for all actual, reasonable,  
13 direct costs incurred in reviewing, evaluating, and making the  
14 determination referred to in Section 5921, including  
15 administrative costs. The selling nonprofit corporation shall  
16 promptly pay the Attorney General, upon request, for all of those  
17 costs.

18 (d) (1) In order to effectively monitor ongoing compliance  
19 with the terms and conditions of any sale or transfer of assets  
20 subject to Section 5920, including, but not limited to, the ongoing  
21 use of the charitable assets in a manner consistent with the trust  
22 pursuant to which they are held, the Attorney General may, in his  
23 or her sole discretion, contract with experts and consultants to  
24 assist in this regard.

25 (2) Contract costs shall not exceed an amount that is reasonable  
26 and necessary to conduct the review and evaluation. Any contract  
27 entered into under this section shall be on a noncompetitive bid  
28 basis and shall be exempt from Chapter 2 (commencing with  
29 Section 10290) of Part 2 of Division 2 of the Public Contract Code.  
30 The selling nonprofit corporation shall pay the Attorney General  
31 promptly for all contract costs.

32 (3) The Attorney General shall be entitled to reimbursement  
33 from the selling nonprofit corporation for all actual, reasonable,  
34 and direct costs incurred in monitoring ongoing compliance with  
35 the terms and conditions of the sale or transfer of assets, including  
36 administrative costs. The Attorney General shall be entitled to this  
37 reimbursement for a period of time not to exceed two years after  
38 any time period specified in the terms or conditions of sale or



- 1 transfer of assets. The selling nonprofit corporation shall promptly
- 2 pay the Attorney General upon request for all of those costs.

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